IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3273 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

HAJARILAL RAMJILAL

Appearance:

MRS SIDDHI D TALATI for Petitioner

MR JJ DAVE for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 19/01/2001

ORAL JUDGEMENT

Being aggrieved by the order passed by the Labour Court, Junagadh in Recovery Application (Central) No.3/94 dated 29.2.2000, the petitioner has approached this court with a prayer to quash and set aside the said order.

The facts which have given rise to the present petition, in a nutshell, are as under :

2. The respondent was working as a daily wager casual labourer under the Chief Permanent Way Inspector, Bhavnagar Para. The respondent made a grievance before the Central Administrative Tribunal (CAT), Ahmedabad Bench in Original Application No. 715/88 that his service was orally terminated and, therefore, he prayed that he should be reinstated in service. He gave some instances with regard to the persons who were junior to him, and had been continued in service and, therefore, prayed that the respondent should be reinstated in service. After hearing the concerned parties and looking to the facts of the case, by a judgment dated 9th November 1993, the Tribunal directed the petitioner to reinstate the respondent in service within a period of 12 weeks from the date of the judgment with continuity of service in accordance with the relevant rules, but without any backwages. In pursuance of the direction the petitoiner reinstated the respondent without backwages.

3. The respondent thereafter filed Contempt Application No. 62/94 in Original Application No. 715/88 before the CAT. He submitted therein that the petitioner had not complied with the directions given by the CAT in Original Application No. 715/88 and, therefore, contempt proceedings should be initiated against the petitioner. He submitted in the said contempt application that the respondent had been reinstated at a different place. According to the respondent, the respondent ought to have been reinstated at Bhavnagar and not at Veraval. After hearing the parties, the Tribunal came to the conclusion that by reinstating the respondent at a different place, no contempt was committed by the petitioner. The next contention, which was urged on behalf of the respondent before the CAT in the contempt application, was that the name of the respondent should have been placed on the Live Register so that the respondent can know his position in the seniority list compared to other casual labourers. In pursuance of the direction given by the CAT in Contempt Application No. 62/94, the petitioner had placed the name of the respondent in the Live Register at an appropriate place. In the circumstances, the contempt application was disposed of and the notice was discharged.

4. During pendency of the contempt application, Central Recovery Application No. 3/94 was filed in

Labour Court No. 2 at Junagadh by the respondent. It was submitted in the said Recovery Application that though the respondent was reinstated in service as per the direction of the CAT, the petitioner had not given benifit of a particular payscale to the respondent and therefore it was prayed that the petitioner should be directed to fix pay of the respondent as directed by the CAT. According to the respondent he should have been placed in the pay-scale of Rs. 775-1025 and he ought to have been paid his wages in the said pay-scale along with all other incidental monetary benefits. After hearing the learned advocates, the Labour Court allowed the said recovery application by an order dated 29.2.2000 and directed the petitioner to put the petitioner in the pay-scale of Rs. 775-1025 after 120 days from 24th April 1981 and it also directed that the petitioner should pay other incidental monetary benefits to the respondent. It was further directed that the amount which might be determined should be paid to the respondent within a period of 30 days from the date of the order in addition to Rs. 3,000/- which was to be awarded to the respondent by way of costs.

5. Being aggrieved by the order dated 29.2.2000 passed in Central Recovery Application No. 3/94 the petitioner has approached this court.

6. Learned Advocate Ms. S.D. Talati appearing for the petitioner has submitted that the order passed by the Labour Court in Central Recovery Application No. 3/94 is unjust and illegal and is violative of the legal provisions. In support of her submissions, she has submitted that the CAT had directed that the respondent should be reinstated in service with continuity of service, but without backwages. Looking to the fact that no backwages were to be paid to the respondent by the petitioner, there was no question of making any payment of backwages.

7. It has been further submitted by the learned advocate that it was not open to the Labour Court to award any amount to the respondent by way of backwages in a recovery application under the provisions of sec. 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') because the jurisdiction of the Labour Court under the provisions of sec. 33C(2) of the Act is very limited. The Labour Court can grant a recovery application only if the amount to be paid to the applicant is determined. It has been submitted by her that in the instant case no amount was to be paid to the respondent by way of backwages in pursuance of the order

passed by the CAT and, therefore, nothing was to be paid by way of backwages to the respondent. Assuming without admitting, she has further submitted that even if some amount had to be paid, the recovery application was not maintainable for the reason that before entertaining the recovery application there should have been some adjudication with regard to the amount payable to the respondent. In the instant case, there was no adjudication and, therefore, it was not certain as to what amount was to be paid. According to the learned advocate, in a recovery application if the amount payable to the applicant is not certain, the recovery application cannot be entertained.

8. The learned advocate appearing for the petitioner has also drawn my attention to the contents of the recovery application wherein it has been stated that the respondent had filed the recovery application for backwages. According to the learned advocate, as the CAT had not awarded backwages, it was not open to the respondent to initiate any proceedings for the purpose of recovery of backwages and, therefore, the order passed by the Labour Court in Central Recovery Application No. 3/94 is not proper.

9. Lastly, the learned advocate appearing for the petitioner has submitted that by virtue of the impugned order, the petitioner has been directed to pay the backwages to the respondent in the pay-scale of Rs. 775-1025 after 120 days from 24th April 1981 with all incidental monetary benefits. It has been submitted by her that the pay-scale which has been referred to in the recovery application had come into force with effect from 1st January 1986 and, therefore, the Labour Court could not have directed payment of the scale which was not in force at the time when the respondent was initially appointed as a casual labourer. Moreover, she has reiterated that the CAT had directed reinstatement without backwages and, therefore, by initiating proceedings before the Labour Court, the respondent could not have prayed for backwages which had been specifically denied by the CAT.

10. For the reasons stated hereinabove, it has been submitted by the learned advocate that the order passed by the Labour Court in the recovery application is unjust, illegal and improper and, therefore, the said order should be quashed and the petition should be allowed. She has relied upon some of the judgments laying down law to the effect that the recovery application cannot be filed unless the amount which is

sought to be recovered by the applicant is determined. As the submission by the learned advocate is well-established, I need not refer to the judgments which she has cited.

11. On the other hand, learned advocate Shri J.J. Dave appearing for the respondent has vehemently submitted that the impugned order passed by the Labour Court in the recovery application is just, legal and proper. He has submitted that the respondent is a class IV employee who has been exploited by the present petitioner, who is the Union of India, and instead of behaving as a model employer, the petitioner has acted in a manner which would not befit any employer. He has referred to several decisions laying down law to the effect that the State should act as a model employer and should never exploit its employees.

12. It has been submitted by him that there is no question of res judicata in the instant case. It is a legal and fundamental right of the respondent to get justice and for the purpose of getting justice he had filed the recovery application under the provisions of Sec. 33C(2) of the Act. It has been submitted by him that when a person approaches the court for his legal right, his case should not be thrown away by the court on the technical ground of res judicata. It has been submitted by him that even if the CAT had decided that the respondent was not entitled to backwages, it was open to the respondent to file a recovery application for claiming backwages.

13. It has been thereafter submitted by the learned advocate that there is no patent error in the order passed by the Labour Court in the recovery application and therefore this court should not entertain this petition. According to him, in the instant case, the impugned order is just, legal and proper and as there is no illegality in the said order, the said order should not be quashed and set aside.

14. It has been thereafter submitted by him that the order passed by the CAT has become final. The petitioner never challenged the order dated 9.11.93 passed by the CAT. As the said order has not been challenged, the said order has become final and, therefore, it was obligatory on the part of the petitioner to reinstate the respondent with continuity of service. He has thereafter submitted that whenever an employee or workman is reinstated in service with continuity of service, backwages are to be given, and without payment of backwages, the order of

reinstatement with continuity of service would be of no use to the concerned workman and, therefore, consequential benefits in the nature of backwages must be given to the respondent and the Labour Court had rightly awarded backwages to the respondent after considering the spirit with which the CAT had passed the order dated 9.11.93.

15. It has been lastly submitted by him that the arguement with regard to non-maintainability of recovery application under the provisions of sec. 33C(2) of the Act before the Labour Court was never objected to by the petitioner before the Labour Court. It has been submitted by him that as maintainability of the application was not objected to at the relevant time before the Labour Court, it was not open to the petitioner to submit before this court that the recovery application was not maintainable.

16. In the course of submissions, learned advocate Shri Dave has relied upon numerous judgments and he has cited about 180 judgments of the Supreme Court and various other High Courts to substantiate some of the submissions made by him. As the list of judgments cited by him is very lengthy, in my opinion, it is not necessary to enumerate the same here, especially when most of the judgments cited by him pertain to maintainability of a writ petition, behaviour of a model employer, importance of fundamental rights of the citizen etc.

17. I have heard the learned advocates and have also perused the relevant record pertaining to the case, which was shown to this court by the concerned parties.

18. Upon hearing the learned advocates and upon perusal of the papers, it is very clear that the CAT never awarded any backwages to the respondent. Upon perusal of the operative portion of the CAT's order dated 9.11.93, it is very clear that the respondent was to be reinstated in service within 12 weeks from the date of the order with continuity of service in accordance with the relevant rules but without backwages. It is not in dispute that the respondent has been reinstated in service and, therefore, the question with regard to reinstatement does not arise. The second direction which was given by the CAT in its order was with regard to reinstatement with continuity of service in accordance with the relevant rules. It has been submitted by the learned advocate appearing for the petitioner that so far as the direction regarding reinstatement of the

respondent is concerned, it has been duly complied with and as no backwages are to be given by virtue of the order passed by the CAT, the respondent cannot have any right to get the backwages. I see much substance in the said submission. It is very clear that the respondent was to be reinstated in service without backwages. Looking to the fact that the order passed by the CAT has become final, it was not open to the respondent to file a recovery application praying for backwages. In the circumstances, I am of the opinion that the Labour Court ought not to have entertained the application for recovery so far as payment of backwages is concerned.

19. The submission of learned advocate Shri Dave appearing for the respondent that the principle of res judicata would not apply in a case where injustice has been caused to a litigant is without any force. It is not in dispute that the respondent had clearly stated before the Labour Court that the said recovery application was filed for the purpose of getting backwages. The said application was filed for the purpose of execution of the order dated 9.11.93 passed by the CAT. The order passed by the CAT was very much on the record of the Labour Court. In the circumstances, the Labour Court ought not to have passed any order directing the petitioner to give backwages to the respondent and, therefore, the impugned order passed in the recovery application is bad in law. The Labour Court has exceeded its jurisdiction while directing the petitioner to pay backwages to the respondent.

20. It is also pertinent to note that the petitioner could not have been directed to fix pay of the respondent in the pay-scale of Rs. 775-1025 with effect from 1981. It is not in dispute that the pay-scale of Rs. 775-1025 had come into force on 1.1.1986. Before 1.1.86 no temporary casual labourer was given the said pay-scale and therefore also the order passed by the Labour Court is absolutely unjust and improper.

21. Upon perusal of the order dated 9.11.93 passed by the CAT, it appears that the respondent was to be reinstated with continuity of service in accordance with the rules and regulations which were in force at the relevant time. At the most, for the purpose of determining the wages payable to the respondent after his reinstatement, the petitioner can be directed to fix the pay of the respondent in the relevant pay-scale. For the purpose of determining the pay of the respondent upon his reinstatement, the petitioner had to look at the structure of payscale which was in force at the time when

the service of the respondent was wrongfully terminated. There should have been notional pay fixation and on the basis thereof the respondent's pay should have been fixed in the payscale which was in force at the time when he was actually reinstated in service.

22. In the circumstances, if notional pay-scale of the respondent has not been fixed by the petitioner, it is directed that the petitoiner shall fix the notional pay of the respondent on the date on which he was reinstated. It is also not in dispute that a casual labourer is not entitled to pay-scale from the date on which he is appointed as a temporary casual labourer. It has been submitted by the learned advocates that the respondent had become permanent casual labourer 120 days after 24.4.1981, the date on which he was appointed for the first time as a casual labourer in pursuance of the order dated 9.11.93 passed by the CAT. In the circumstances, it is directed that if wages payable to the respondent are not notionally fixed, the petitioner shall fix the same as directed by the CAT.

23. Subject to the above-referred direction with regard to pay fixation, this petition is partly allowed. The impugned order dated 29.2.2000 passed in Recovery Application (Central) No. 3/94 is quashed and set aside. There shall be no order as to costs.

(A.R. Dave, J.)

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